

**Before the  
Federal Communications Commission  
Washington D.C. 20554**

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|--|---|---------------------|
| In the Matter of                       | ) |                     |
|  | ) |                     |
| Auction of Advanced Wireless Services) | ) | AU Docket No. 06-30 |
| Licenses Scheduled for June 29, 2006 ) | ) |                     |
|  | ) |                     |
| Comment Sought on Reserve Prices       | ) |                     |
| or Minimum Opening Bids                | ) |                     |
| and Other Procedures                   | ) |                     |

To: The Wireless Telecommunications Bureau

**COMMENTS OF NTCH, INC. dba CLEAR TALK**

NTCH, Inc. ("NTCH") hereby submits comments in response to the Federal Communications Commission's ("FCC" or "Commission") Public Notice seeking comments on competitive bidding procedures for the auction of Advanced Wireless Services ("AWS") licenses in the 1710-1755 MHz and 2110-2155 MHz (AWS-1) bands. As providers of new and innovative wireless services, NTCH remind the Commission that Section 309(j) of the Communications Act of 1934, as amended ("Act"), expressly commands that the Commission develop its competitive bidding procedures "for the benefit of the public" With that in mind, NTCH's comments address certain proposed AWS-1 auction procedures that will deter the delivery of AWS services to consumers in underserved economic segments and rural areas, contrary to the mandate of Section 309(j). Specifically, NTCH understands that the Rural Telecommunications Group ("RTG") is filing reply comments, and

agrees with and supports the comments of RTG which 1) opposes the Wireless Telecommunications Bureau's ("Bureau") proposal to withhold certain information on bidder interests, bids, and bidder identities (so called "blind bidding"); 2) opposes excessive upfront payments, especially for lower value rural markets; and 3) believes that the Bureau's proposed use of "package bidding" is premature and will be harmful to small and rural entities participating in the AWS-1 auction.

In addition to the comments filed by RTG, NTCH has additional concerns not included in RTG's comments.

**I. Both Blind Bidding and Packaged Bidding Will Adversely Impact Small Independent Wireless Provider Participation in the Auction and the Provision of AWS.**

The national and large regional wireless carriers, plus the potential of new multi-billion dollar entrants such as cable companies, software companies, and internet based companies have the extensive resources to develop proprietary software to determine who bidders are and the complex calculations required for successful combinatorial bidding. Developing such systems may be justified for carriers looking to acquire nationwide licenses, but places the small carriers who do not have the resources at a substantial disadvantage.

Interestingly, one of the alternatives proposed by the Commission is a second, simultaneous auction in which the largest geographic blocks would be auctioned. In that auction, where obviously only the very largest companies would be able to bid, the Commission does not propose to apply the blind bidding and other rules which it proposes to apply to the “hoi polloi.” Yet the problems of signalling, collusion, retaliation, and other anti-competitive behaviors which stimulated the blind bidding proposal are *heightened*, not lessened, in an environment where only a handful of bidders are in the pool. This suggests a curious favoritism toward the largest potential bidders which is wholly at odds with the Congressional mandate.

It is speculation to assume that blind bidding would be good policy in raising additional funds in the auction, as there have been numerous instances in previous auctions where a bidder will bid up a given license in order to make their known opponent pay a higher amount, particularly when one bidder has a discount and the other does not. The advantage of blind bidding generating additional amounts vs. the known competitive bidding generating revenue for the Treasury is a subjective exercise but what is known is that in general the current process works. It would seem imprudent with such a large auction, in fact the most broadband PCS spectrum auctioned in a single auction to date, to make such a significant and potentially disastrous change.

At a minimum, the 352 Economic Area (EA) licenses and 734 Cellular Market Area (CMA) should be auctioned under the same procedures as previous auctions, however any participants (or their affiliates or partnerships) in the 36 REAG licenses shall not be allowed to participate in the EA and CMA bidding.

## **II. ROAMING**

NTCH understands that the FCC's Roaming Inquiry is a separate matter, however it is worth noting that the FCC has the opportunity to correct past policy which has been damaging to small independent and rural carriers by requiring winning bidders in Auction 66 to enter into reasonable roaming agreements with each other.

The plight of rural and small independents is the result of many distinct Commission policies, and the Commission needs to address the problem by remedial action in various contexts, including rules for new auctions like this one.

## **III. FCC POLICIES HAVE DISSERVED SMALL BUSINESS, MINORITY, AND WOMEN OWNED ENTERPRISES AND**

**HAMPERED THE DELIVERY OF SERVICES TO THE  
UNDERSERVED.**

Other than for political or influence from the largest carriers, we do not understand why the Designated Entity matter is “separate” docket from the Auction comments. The issue of Designated Entities, and Roaming are integrally related to the holding of any Auction.

In less than six (6) years, the influence of the nation's largest carriers that control 90% of the PCS and cellular spectrum has virtually eliminated minorities, women, and now under the proposed rule changes, small business, from the roster of new auction winners despite the congressional mandate to provide these groups opportunities under Section 309j.

Prior to Auction 22 in 1999, the Commission removed the incentives for women and minority owned business despite the fact that the constitutionality of the preference for females and minorities had never been adjudicated. The rationale was that the small business credits would encompass and provide incentives for women and minorities.

In Auction 35, held in 2001 , the Commission opened up spectrum blocks in the larger markets in to large carriers, and for the first time we saw a few of

the large national carriers actually bidding with "DE partners" in order to obtain the "small business" discounts.

Then for Auction 58 in 2005, the largest of the national carriers that did not have "DE partners" decided to join the other national carriers to take advantage of the loopholes that had been created and approved by the FCC after Auction 35. As build out requirements or a desire to transfer a license to a non-DE entity began to become an issue in 2000, a new term was coined..."the license save": another loophole to transfer restricted licenses to the large national carriers, or a way to hold onto a license without providing usable service to the public.

And now for Auction 66, the rules eliminate restricted blocks completely, after the Commission has concluded set asides are "unnecessary". But what about those of us who have made it work, and are now being abandoned companies such as ours that have brought service to rural America and underserved economic groups. True, there are only a handful of smaller, pure PCS start ups like ourselves that have survived and been profitable: Comscape dba KiwiPCS in North Carolina, Northcoast/Revol PCS in Cleveland OH, Alaska Digitel in Alaska, in addition to the more widely known Cricket and Metro PCS. There have been some cellular carriers that were able to expand their service areas by buying new spectrum: Hargray in

South Carolina, Corr Wireless in Alabama, Enterprise in Georgia, US Unwired in Louisiana, Northern PCS/Cellular 2000 of St. Cloud, Plateau Wireless, and Chariton Valley Wireless all drove the national carriers to improve coverage or enter into arrangements to bring better service to these areas. The companies that have remained independent have more than likely grown beyond the \$15M in revenues required to obtain the highest discount.

These companies and others who have fulfilled the intent on which they made their initial investments should be allowed to qualify for the largest discount available. Whatever the rules there will always be new loopholes and new ways the largest carriers will find to access spectrum needed by small companies who innovate or provide services to the underserved whether it be in rural areas or a socioeconomic group.

Eliminating competition, eliminating access to spectrum through warehousing or effective lobbying, and refusing to enter into reasonable roaming agreements will ultimately eliminate the small businesses -- the very vehicle which the FCC intended to use to provide opportunities to groups which include women and minority entrepreneurs. This result cannot be interpreted as the primary intent of any part of section 309j.

Opponents will argue that providing discounts and opportunities are contrary to other provisions of section 309j requiring the Commission to maximize revenues. We disagree, the Commission could still maximize the primary source of its revenues by providing qualified entities ("QE's") with even larger discounts (between 35 and 50%) from the national carriers. This way only spectrum that the larger carriers clearly need will be bid on, thereby eliminating warehousing for anti-competitive reasons.

Qualified Entities should be 1) those carriers previously receiving Designated Entity status in previous auctions without a relationship to a large national carrier who can demonstrate without question to the Commission that they have provided a real service to paying customers on an actual network and continue to independently operate PCS licenses ("exempt"), or 2) new bidders with no relationship to a large national carrier and who qualify under the existing revenue tests.

It is important to note that because there has been an elimination of the restricted spectrum blocks, a large company faces, at worst, paying back discounts it did not deserve if it is deemed too large through affiliations, etc., or otherwise to qualify for a discount. Previously the winning bidder faced losing its license if it was deemed to be ineligible. Another reason why we



propose higher discounts is to reduce the likelihood of the larger carriers abusing the discounts.

We also would not be opposed to all DE exemptions being subject to final review by the Commission who could reject the exemption if it believed the granting the entity exempt status would not be in the interest of the public or was cleverly designed to unduly obtain discounts.

In summary we request the Commission to consider;

- Increasing the discounts to 35-50% to eliminate spectrum warehousing and maximize revenues from the largest carriers who have the resources and competitive advantage to pay more.
- Eliminate DE fronts -- simply prohibiting any material affiliation to a large national carrier resulting in reduced access to spectrum to true small businesses would be adequate.
- Exempt previous DE's as Qualified Entities receiving the largest discount.
- Make the largest discounts available to only those carriers who have not used the advantages of the bankruptcy court to avoid obligations in the past.

### **III. Conclusion**

Changes to past auction methodology benefit new entrants with substantial resources to the detriment of small independent and rural

wireless carriers. Blind bidding, combinatorial bidding, excess upfront payments and minimum bids, and no mandate for winning bidders with compatible technology to enter into reasonable roaming agreements are all contrary to the stated objectives of Section 309(j) of the Act. Because of this, the FCC should 1) eliminate blind bidding, at least in the EAs and CMAs; 2) develop lower, reasonable upfront payments and minimum bids for the EAs and CMAs consistent with RTG's proposal; 3) not implement combinatorial bidding; 4) require winners to enter into reasonable roaming agreements if technologically compatible; 5) provide substantial discounts to true small businesses and smaller independent operators who have been proven to provide services to rural areas and/or underserved socioeconomic groups.

Respectfully submitted,

**NTCH, INC.**

By: \_\_\_\_\_/s/\_\_\_\_\_

Glenn W. Ishihara  
President  
703 Pier Ave #B  
PMB813  
Hermosa Beach, CA. 90254  
(310) 798-7110

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